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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Third strategic review of Better Regulation
in the European Union**

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I. INTRODUCTION

Over the last four years, this Commission has made significant progress in implementing its better regulation agenda. It is simplifying legislation that is already on the books to ensure that it is up to date and more accessible. It is cutting red-tape and implementing a programme focused on reducing administrative burdens for businesses. To ensure that new legislation and policies are of the highest quality possible, it has rolled out a wide-ranging and ambitious impact assessment system. And together with the Member States, it is developing more efficient and effective approaches to ensuring that Community law is correctly applied.

Regulation is necessary and beneficial for many reasons: to ensure that markets function properly; to create a level playing-field for companies and financial institutions competing in the single market; to protect workers and consumers, health and the environment. At the same time regulation brings costs – for companies, public authorities and citizens – and these must be kept to a minimum. In driving forward the better regulation agenda, the Commission's aim has been to ensure that the regulatory framework helps to stimulate entrepreneurship and innovation, allows businesses to compete more effectively and to exploit fully the potential of the internal market. In doing so, the Better Regulation agenda contributes to growth and job creation while maintaining high standards of social, environmental, health and consumer protection. The European Economic Recovery plan stressed that in the current context of economic and financial difficulties, with growing pressure on businesses and on households, the quality of the regulatory environment is more important than ever before¹.

The last four years have seen a step change in how the Commission implements the better regulation agenda. This puts the Union in a good position to face future challenges. Experience has shown that better regulation is most successful if all European institutions and Member States share responsibility and work together. This experience is an invaluable asset on the international stage. The G20 summit in November 2008 highlighted that certain regulatory issues can only be addressed with our international partners, and it has shown the growing role the EU can play when it acts together.

This Communication reviews where progress has been made and highlights areas where further efforts are necessary. It is an input to the European Council's stock-taking on better regulation in March 2009 under the Czech Presidency.

II. IMPROVING EXISTING LEGISLATION

Since 2005, this Commission has undertaken undoubtedly the most ambitious and determined initiative ever to update, modernise and simplify the body of Community legislation (the 'acquis'). A range of activities – the Simplification Rolling Programme, the screening of the acquis for simplification potential, codification activities, systematic availability of

¹ COM(2008) 800.

consolidated versions of legal texts, and the programme for the reduction of administrative burdens – are bringing tangible benefits for businesses, citizens and public authorities.

1. Legislation is now simpler, clearer and entails less red-tape

During this Commission, simplification has developed from being a rather limited set of largely independent simplification actions into an inherent part of any policy revision, across all policy areas. In October 2005, the Commission drew up a “simplification rolling programme” of 100 initiatives for the period to 2008. It has updated the programme each year with new initiatives, and progressively extended it to all policy areas. Suggestions from citizens, stakeholders and Member States have been an important part of this process. The programme now consists of 185 initiatives and, although initial progress was slow, the Commission has now tabled proposals to simplify 132 of them². 75 of these proposals have been adopted, and a further 50 are pending before the Council and Parliament.

As well as simplifying, the Commission has been codifying its legislation, bringing the basic law and subsequent amendments into one text. This has made laws clearer and reduced the volume of legislation. In 2008, the Commission finalised the codification of 229 acts out of a total of 436. 142 acts were adopted and published in the Official Journal. By simplifying and codifying legislation, this Commission has taken action which will reduce the *acquis* by almost 10% - about 1,300 legal acts and 7,800 pages of the Official Journal.

The Commission has also carried out an annual exercise since 2005 to withdraw proposals which are no longer relevant. A total of 108 proposals have been withdrawn, including 30 in 2008.

The Commission is moving towards a more integrated approach to simplification where the aim is to examine the entire body of legislation that affects a policy area to identify overlaps, gaps, inconsistencies, obsolete measures, and potential for reducing regulatory burdens. This process began with the Second Strategic Review of Better Regulation in which the Commission made a commitment to complete a comprehensive screening of the *acquis* by the end of its mandate. This work prepares the ground for simplification activities beyond 2009 and has identified some 81 actions that the next Commission could incorporate in future simplification activities³.

Results

These initiatives make legislation clearer and more accessible, bringing tangible benefits for companies and citizens. For example:

Consumers will be able to shop more easily in the EU, notably on the internet, when the Directive on Consumer Rights is adopted. This Directive recasts four existing Directives into one set of fully harmonised rules.

Consumers will also benefit from the revision of the EU framework for investment funds which will replace 10 existing directives with a single text, providing access to professionally managed investments on affordable terms⁴.

Businesses providing services throughout the EU will face much simplified rules thanks to the new “VAT package”.

² 7 of these proposals were reviews which concluded that there was no need for legislative action, or were merged with other initiatives.

³ Commission Working Document Third Progress Report on the strategy for simplifying the regulatory environment COM(2009) 17.

⁴ These are known as UCITS funds – Undertakings for Collective Investment in Transferable Securities.

Small businesses will benefit from the new General Block Exemption Regulation which increases the possibilities for Member States to provide state aid to small businesses in areas such as training, innovation, and energy efficiency. It also consolidates 5 separate regulations into one text.

Modernisation and simplification of air transport rules, combining 3 existing regulations into one, will contribute to greater consumer choice, lower fares and more competition. Stricter requirements and better supervision of start-up airlines will reduce bankruptcy risk and negative consequences for consumers.

Farmers will save costs as a result of a further simplification of the single payment scheme following the adoption of the Health Check of the Common Agricultural Policy.⁵

2. *The administrative burden for businesses is being reduced*⁶

While simplification and codification provide concrete benefits for businesses and citizens, the Commission decided that further targeted action was also required to remove unnecessary administrative burdens for businesses. In 2007 it identified 42 pieces of legislation in 13 priority areas which represent an estimated €15 – 130 billion of administrative costs. On this basis it has put in place a programme to reduce administrative burdens by 25% by 2012, the target endorsed by the European Council in March 2007. The Commission is on track to meet the target through various steps.

By December 2008 the Commission had already presented a number of measures that will bring about significant reductions in administrative burdens for businesses⁷. They include the modernisation of EU customs legislation and the creation of a paperless environment which should generate benefits for traders estimated at €2.5 billion per year. In the area of statistics, the reduction proposals concerning intra-Community trade in goods adopted since 2004 or pending before the legislators will enable Member States to exempt about 370,000 companies from reporting obligations. This represents a potential reduction of the surveyed population of enterprises of roughly 52% over six years (from 2004 to 2010) or more than €100 million of savings per year until 2010 and more than €200 million of savings per year from 2010 onwards, in particular for SMEs.

As a next step, the Commission is identifying the specific reductions which can be made in each of the priority areas. This exercise is well advanced for two key priority areas. In the case of Company Law, the Commission plans to propose to allow Member States to exclude micro-enterprises from the scope of EU accounting directives. The "Think Small First Principle" is being applied across the board to these directives to tailor the regime to the needs of SMEs. These revisions could bring total savings to around €8 billion. The Commission will propose an ambitious revision of the VAT Directive to remove the barriers to electronic invoicing and to modernise invoicing rules. The maximum mid-term reduction potential of removing the VAT obstacles to e-invoicing was estimated at up to €18 billion if all invoices were sent electronically.

So far, reduction measures presented or foreseen represent savings in excess of €30 billion.

This reduction programme is based on an extensive exercise to map and assess the administrative burdens produced by EU legislation for the 27 Member States and 13 priority

⁵ Additional information on simplification initiatives in the agricultural sector will be presented in a Commission Progress Report in Spring 2009.

⁶ Commission Working Document on Reducing Administrative Burdens in the EU COM(2009) 16.

⁷ Some of these proposals are "Fast Track Actions" which Council and Parliament have been slow to adopt (3 of 6 proposals presented in 2007, and only 1 of 7 in the 2008 package).

areas. This has put the EU at the forefront of efforts to reduce the red tape that results from so-called "information obligations". It has provided a much better understanding of how Member States transpose and implement EU legislation, and what this means for businesses in terms of information obligations⁸ The exercise has increased the awareness of public authorities of administrative burdens, and provided them with an opportunity to revisit the effectiveness and efficiency of the rules in place.

The exercise is benefiting extensively from external expertise and stakeholder input. The positive opinions of the High Level Group of Independent Stakeholders on Administrative Burdens on the exemption of micro-enterprises and on VAT reform on e-invoicing rules are good examples of this. The Group is also driving the process forward in other priority areas. More than 350 submissions have been made through the online and the off-line consultations. Finally, Member States have agreed to make comparable efforts and by the end of 2008 21 had set national reduction targets, up from 7 at the end of 2006. Some Member States have already made major changes to the transposition of EC legislation. The Commission is working closely with national authorities which transpose EU legislation to disseminate good practices that allow administrative burdens to be reduced quickly. It invites the Member States to take full advantage of the starter kit it has developed for future measurement and reduction work and to promote further data harmonisation and comparability. The Commission also invites them to agree on a set of principles for monitoring the progress in reducing administrative burdens at EU and Member State levels.

3. Next steps

Improving the quality of existing legislation and suppressing unnecessary administrative burdens are all the more important for business in the current difficult economic circumstances. The Union must, therefore, implement these programmes vigorously.

- The Commission, on the basis of the EU baseline measurement, will identify the specific reductions to be made in each of the 13 priority areas and will present proposals stemming from the present action programme to reduce administrative burdens in EU legislation. Every effort will be made to adopt these proposals before the end of this Commission mandate.
- The Commission will present 33 new simplification initiatives in 2009. These measures will aim, for example, at combating late payment in commercial transactions, exempting micro-entities from the accounting requirements or ensuring recognition and enforcement of judgements in civil and commercial matters.
- On the basis of the screening of the *acquis*, the Commission has identified 81 new actions that the next Commission may consider for a future simplification programme.
- Council and Parliament are invited to adopt as rapidly as possible the 50 pending simplification initiatives, and all pending administrative reduction proposals.

⁸ The exercise identified 356 EU obligations and over [9500] national obligations in the EU-27. It involved around 3000 interviews with businesses, and more than 50 workshops with local business associations and national ministries.

- Taking into account the inputs received from the consultation, the Commission is proposing to extend the action programme to include a further 30 legislative acts.
- The Commission will continue to work closely with national authorities responsible for transposing EU legislation to disseminate good practices for reducing administrative burdens quickly.
- Member States which had not set a national reduction target by 31 December are invited to do so before the 2009 Spring European Council. All Member States are invited to take concrete measures at their level, and to report on these in the annual national progress reports on the Lisbon Strategy.

III. IMPROVING THE QUALITY OF NEW INITIATIVES

1. A broad and ambitious approach

Improving the quality of new initiatives is an essential part of the better regulation agenda. In line with international best practice, the Commission believes that the most effective way of creating a better regulation culture is by making those people who are responsible for policy development also responsible for assessing the impacts of what they propose. This has been a fundamental aspect of the impact assessment system which the Commission has been rolling out since 2002, and which it believes is changing fundamentally the working culture of the institution. Since 2002, the Commission has completed over 400 impact assessments. In 2008 alone, 135 were carried out. The system has a number of characteristics which are worth highlighting.

First, the Commission is convinced that an integrated approach to impact assessment is the most appropriate way of ensuring the necessity of the measures it proposes and of producing high quality policies. Impact assessments therefore analyse both benefits and costs, and address in a balanced way all the significant economic, social and environmental impacts of a possible initiatives. This approach ensures that all relevant expertise within the Commission is used, together with inputs from stakeholders and in doing so enhances the coherence of initiatives across policy areas.

Second, the Commission has extended the requirement to do impact assessments beyond initiatives in the annual Legislative and Work Programme, to cover all initiatives which are likely to have a significant impact. This includes comitology items with significant impacts.

Third, to help to ensure that impact assessments conform to procedures and quality standards, the Commission has put in place a demanding, central quality control function in the form of the Impact Assessment Board (IAB) which is independent of the policy making departments. The IAB has examined and issued opinions on all the Commission's impact assessments since it was created at the end of 2006. It has improved policy quality by requesting resubmissions of impact assessments in 32 % of cases in 2008, and through the recommendations it has made to the Commission to improve the quality of impact assessments. In 2008, it has put increasing emphasis on the need to quantify impacts more systematically and to address clearly the issue of administrative burdens. It has also supported Commission services in producing their impact assessments in particular concerning the methodology they use.

Finally, the Commission has created a system which is transparent and accountable. It is promoting greater transparency in the process of policy making and a fuller involvement of

stakeholders. All impact assessments and all opinions of the IAB are publicly available once the Commission has adopted the relevant proposal⁹.

2. *Impact assessments will be improved further*

The Commission has put in place an impact assessment system which in terms of completeness and transparency is generally considered to be of very high standard at European and international level. There is scope, nonetheless, for further improvements in the quality of the impact assessments themselves. The IAB recommended in its 2008 report that quality control be reinforced before the impact assessments are submitted to the IAB. The Commission will take a number of measures to do this. In particular it will strengthen the role of the impact assessment unit in each Directorate General, and the role of Impact Assessment Steering Groups to ensure that all relevant expertise within the Commission is taken into account. It will increase "ownership" of impact assessments through the definitive approval of Directors General.

The Commission has identified a number of other improvements on the basis of the IAB's experience, inputs from the High Level Group of National Experts on Better Regulation, and the public consultation on the Impact Assessment Guidelines in mid-2008. Many of these are reflected in the revised Guidelines which have been in force since the beginning of 2009. The impact assessment system will have:

- **Stronger focus:** the Commission will focus impact assessments more on legislative proposals, both in and beyond the Legislative and Work Programme, including on comitology items with significant impacts.
- **Better stakeholder consultation:** the Commission's Minimum Standards for Consultation must be fully implemented. For complex or sensitive proposals, Commission departments are encouraged to go beyond the 8 week minimum consultation period; further efforts will be made to ensure that all stakeholders are aware and able to contribute to consultations; clearer feedback should be provided in impact assessments on what information was requested from stakeholders, what was received, and how it was used.
- **More rigorous analysis of subsidiarity:** The Guidelines now provide a list of explicit questions that services should address in the problem analysis, with further guidance for the analysis of proportionality and EU-value added for all policy options that are presented.
- **More thorough assessment of specific impacts:** Within the integrated approach to benefits and costs in the economic, social and environmental domains, there is additional guidance on specific aspects of these impacts. This is the case for impacts on SMEs, which should be assessed in line with the Small Business Act (through a so-called 'SME test'); issues related to fundamental rights; and impacts on consumers and public health. Impacts on regional and local levels will be taken into account.
- **More quantitative evidence and analysis:** The Guidelines provide strengthened guidance on quantification and references to best practices for assessing different types of compliance costs.
- **Improved assessment of administrative burdens:** The Commission has improved the guidance for estimating administrative burdens in particular for businesses.
- **More transparent presentation of results:** executive summaries will present a clear overview of any quantified benefits and costs of the various options, including

⁹ http://ec.europa.eu/governance/impact/practice_en.htm

administrative costs for businesses and citizens, other compliance costs, and costs for administrations.

3. *Next steps*

- In 2009 the Commission expects to carry out more than 100 impact assessments, and will do so in line with the revised impact assessment Guidelines.
- The Commission will further reinforce guidance on administrative burdens in the impact assessment guidelines by putting in place early in 2009 new IT tools accessible to all its services.
- The Commission will continue to improve the quality of its impact assessments through reinforced quality control by the responsible services as well as by the Impact Assessment Board.

IV. ALL INSTITUTIONS SHARE RESPONSIBILITY FOR BETTER REGULATION

1. *Better regulation at all levels in the EU*

For the Better Regulation exercise to be successful it is essential that each of the European Institutions assumes its responsibility. EU rules are proposed by the Commission, are adopted by the European Parliament and Council, and national governments and parliaments transpose them into national laws. They are often complemented with regional and local rules. All of these actors have a role to play in improving the regulatory framework.

The process of adopting and implementing EU legislation takes time. The Commission's simplification and administrative burden reduction programmes both contain valuable lessons on the improvements that can be made to bring concrete benefits for businesses and citizens. Progress must, however, be made in speeding up adoption in Council and Parliament of the Commission's concrete proposals, and ensure that those elements which simplify legislation and reduce administrative burdens are maintained.

A priority for the three institutions in 2009 must be to complete the review of the Common Approach to Impact Assessment. The Commission is convinced that this Common Approach provides a sound basis for each of the institutions to develop their approaches to impact assessments. Efforts should focus on identifying concrete ways of improving implementation. The Commission is prepared to support the other Institutions in developing their capacity to deal with the Commission's impact assessments and to carry out their own additional analysis on substantive amendments they make. As stated in the Second Strategic Review of Better Regulation, the Commission will also respond constructively and on a case by case basis to requests by Council and Parliament to expand on aspects of its original impact assessments.

2. *Applying Community law in the Member States*

In 2007 the Commission put forward a strategy for improving the application of Community law¹⁰. It has started-up, in close co-operation with the 15 volunteer Member States, the EU Pilot project to accelerate and improve problem-solving for citizens. It now takes decisions on infringements more frequently. It is well-advanced in the development of more priority-based case handling as reflected in the Annual Report on monitoring of the application of Community law alongside other initiatives adopted or being developed on increased

¹⁰ 'A Europe of Results', COM(2007) 502.

transparency and dialogue¹¹. Experience of the application of the law can lead to the correction or development of legislation in order to better achieve Community objectives. Further measures will be taken in 2009 to implement and reinforce this strategy.

3. *Next Steps*

- Parliament and Council are invited to adopt pending administrative burden and simplification proposals as quickly as possible as foreseen in the 2003 Inter-Institutional Agreement on Better Lawmaking.
- Parliament, Council and the Commission will conclude the joint review of the “Common Approach to Impact Assessment”
- The Commission will ensure improved application of Community law by introducing preventive measures, including increased focus on implementation and enforcement issues in impact assessments, improved implementation planning on new legislation, creating implementation networks and assisting Member States with correlation tables.
- In line with the Small Business Act for Europe, the Commission will use common commencement dates where practicable for future Regulations and Decisions affecting business¹². This would allow SMEs to prepare better and adapt to legislative changes.
- The Commission will work closely with national authorities to improve clarity and coherence of draft national legislation in the context of the notification procedure based on Directive 98/34/EC¹³.

V. **SHAPING GLOBAL REGULATION**

The Commission has continued its regulatory dialogues with major trading partners. In the case of the US, it produced a joint paper with the US Office of Management and Budget in the framework of the Transatlantic Economic Council to compare the respective systems for assessing impacts on international trade and investment in the EU and the US¹⁴. The recommendations made in the paper have been integrated in the Commission's impact assessment guidelines. The US authorities have agreed to do the same in their guidelines for regulatory impact assessment.

The Commission will continue its regulatory cooperation with its trading partners, both in multilateral organisations, such as the UN, the OECD and the World Bank, and in bilateral dialogues to reduce barriers to trade and investment while strengthening environmental and societal protection. The G20 Summit in November 2008 demonstrated the importance of international cooperation in the current economic and financial context and the positive impact which the Union can have when it acts together. In December 2008, the Commission

¹¹ 25th Report on the Application of Community Law - COM(2008) 777.

¹² Under a system of common commencement dates, certain legislation is typically introduced on a small number of fixed dates during the year.

¹³ This Directive obliges Member States to notify all draft technical regulations for products and information society services to the Commission before they are adopted into national law. This helps to reduce the risk of creating unjustified barriers among Member States.

¹⁴ http://ec.europa.eu/governance/better_regulation/impact_en.htm

set out a strategic framework for international regulatory cooperation and identified future priority actions¹⁵.

VI. CONCLUSION

The European Union and its Member States face important challenges in addressing the current economic and financial situation. Better regulation must remain an essential part of our response – regulating where there is a need to do so, in a manner which is as straightforward as possible, based on dialogue with stakeholders, and in a way that keeps burdens on businesses and citizens to the minimum necessary. The experience with better regulation over the last four years provides a good basis on which to confront new challenges. The Commission has identified next steps which require continued efforts and the on-going political support of the other European institutions, the Member States, local and regional authorities, and stakeholders.

¹⁵ COM(2008) 874.